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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)		Application Number	10/033,243
		Filing Date	December 27, 2001
		First Named Inventor	Karen L. FEARON
		Art Unit	1635
		Examiner Name	T. Gibbs
Total Number of Pages in This Submission	4	Attorney Docket Number	377882001800

ENCLOSURES (Check all that apply)		
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	MORRISON & FOERSTER LLP (Customer No. 25225) Karen Zachow, Ph.D. - 46,332
Signature	
Date	May 20, 2004

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.	
Dated: May 20, 2004	Signature:  (Grace Yu)



I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: 5/20/04 Signature: (Signature)  
(Grace Yu)

Docket No.: 377882001800  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Karen L. FEARON et al.

Application No.: 10/033,243

Filed: December 27, 2001

Art Unit: 1635

For: IMMUNOMODULATORY  
POLYNUCLEOTIDES AND METHODS OF  
USING THE SAME

Examiner: T. Gibbs

**RESPONSE TO RESTRICTION REQUIREMENT**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This is in response to the Office Action dated April 20, 2004 which sets forth a restriction requirement for pending claims 1-46 in the above-identified application. A response to this action is due May 20, 2004. Accordingly, this response is timely filed.

A previous restriction requirement and election of species was issued September 11, 2003 and a response to that action was filed October 3, 2003. Applicants understand that the April 20, 2004 restriction requirement supercedes the previous September 11, 2003 restriction requirement and October 3, 2003 response and that the September 11, 2003 action is withdrawn.

Contrary to that stated in the action, claims 1-48 are pending in this application. Restriction has been required as between the following allegedly distinct groups of inventions:

Group I (claims 2-4 and 6-27): drawn to an immunomodulatory polynucleotide comprising an immunostimulatory sequence (ISS), classified in class 424, subclass 184.1;

Group II (claims 28-46): drawn to a method comprising administering an immunomodulatory polynucleotide to an individual, classified in class 514, subclass 44.

Claims 1 and 5 are designated as linking inventions of Group I and II.

Applicants hereby elect Group I (claims 2-4 and 6-27), without traverse. Applicants expressly reserve their right under 35 U.S.C. § 121 to file a divisional application directed to the nonelected subject matter during the pendency of this application, or an application claiming priority from this application.

Applicants respectfully note that pending claims 47 and 48, directed to kits comprising an immunomodulatory polynucleotide were not assigned to either group. Applicants submit that claims 47 and 48 belong in Group I, as described above.

With regard to Group I, the Examiner required an election of a species of a single nucleotide sequence from the group consisting of SEQ ID NO: 1-2, 18, 19, 35, 36, 67-80, 83-96, and 132. Accordingly, Applicants hereby elect the sequence of SEQ ID NO: 132. Applicants request that, upon allowance of a generic claim, the remainder of the species be included as permitted by 37 C.F.R. § 1.141(a).

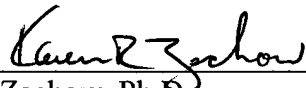
Should the elected product claims be found allowable, Applicants reserve the right to request rejoinder of withdrawn process claims which include all the limitations of the allowable product claim for examination (M.P.E.P. §821.04). Upon allowance of the linking claim(s), any claim(s) depending from or otherwise including all the limitations of the allowable linking claim (s) will be entitled to examination in the instant application.

Applicants request examination of the elected subject matter on the merits.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no.377882001800. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: May 20, 2004

Respectfully submitted,

By   
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